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May 15, 2023

VIA ECF

The Honorable Rachel P. Kovner
United States District Court
225 Cadman Plaza East
Brooklyn, NY 11201

Re: *Gracie Baked LLC, et al. v. GiftRocket, Inc.*, No. 1:22-CV-04019 (RPK) (VMS)

Dear Judge Kovner:

I write on behalf of Plaintiffs in the above-captioned action, to renew Plaintiffs' request for extended and consolidated motion to dismiss briefing, (ECF. No. 46), in accordance with this Court's Order dated May 2, 2023.

According to the original briefing deadlines, Plaintiffs' opposition to GiftRocket Inc.'s motion to dismiss is due this week, on May 17, 2023. Last Friday, Defendants alerted the Court and Plaintiffs through multiple pre-motion conference requests of their intent to file multiple additional motions to dismiss. (ECF Nos. 47–49). Thus, under the present schedule, this week, Plaintiffs will be required to file both a motion to dismiss opposition and two pre-motion conference requests.

For the sake of the Court's and the Parties' efficiency and time, Plaintiffs respectfully request consolidation and an extended briefing schedule in the form of: (1) filing one joint, 6-page response to Defendants' pre-motion conference requests; and (2) a consolidated and extended motion to dismiss briefing schedule.

Consolidated Pre-Motion Conference Response

On May 12, 2023, Defendants filed three separate pre-motion conference letters, totaling eight pages.¹ (ECF Nos. 47–49.) Today, this Court denied one letter requesting a conference and have ordered Plaintiffs to respond to the two other letters, which together total six pages. (ECF No. 49.)

¹ Plaintiffs have filed one amended complaint against one company and its key officers and executives alleging violation of federal and state unfair competition laws based on a singular course of conduct. (ECF No. 45.) Defendants—who are all represented by the same counsel—have now filed four pre-motion conference letter requests to this Court and appear to intend to file a total of at least three motions to dismiss.

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To systematize and streamline a response to these requests, which involve overlapping issues of law and fact, Plaintiffs respectfully ask this Court for leave to file one 6-page letter in opposition as opposed to two 3-page letters.

Consolidated Briefing Schedules on Motions to Dismiss

Plaintiffs renew their request for an extended and consolidated briefing schedule, (*see* ECF No. 46) to respond to what may be an additional two new motions to dismiss, for a total of three motions. Plaintiffs respectfully request to consolidate Rule 12 motion practice for the purpose of efficiency, so that the Court need not decide three separate motions to dismiss on three separate briefing tracks. In addition, Plaintiffs believe that there are substantially overlapping underlying facts and legal issues that will weave throughout the three separate briefs, and that it is economically and legally more sensible to respond to these briefs in concert.

Defendant GiftRocket, Inc.'s initial motion to dismiss was served on April 26, 2023. (ECF No. 45.) This week, Plaintiffs' opposition is due May 17, 2023, and Plaintiffs must also respond to Defendants' two new letters on May 19, 2023. Plaintiffs will later have to respond in opposition to two additional motions to dismiss for a total of three separate motions (as only Defendants Baum and Kale are joining in GiftRocket Inc.'s Motion).

In the interests of judicial efficiency and conservation of resources, Plaintiffs propose an updated combined briefing schedule, as follows:

- Defendants' combined brief in support of their motions to dismiss due two weeks after either (1) any denial of the new pre-motion conference requests; or (2) the conclusion of any pre-motion conference hearing.
- Plaintiffs' opposition due three weeks thereafter.
- Defendants' combined reply, if any, due two weeks thereafter.

To the extent that Defendants need additional pages due to the combined nature of the briefing, Plaintiffs propose an additional 10 pages be allotted for main briefs, and 5 pages to any reply.

This will avoid the Court having to decide at least three overlapping motions to dismiss filed by the same defense counsel involving allegations of wrongdoing by one company, its key executives, based on their singular course of alleged tortious conduct.

If the Court instead prefers to keep Defendants' motions to dismiss should remain on separate briefing tracks—and given Defendants' new letter requests last Friday—Plaintiffs request in the alternative an extension from May 17, 2023, to May 26, 2023, to respond to GiftRocket's motion to dismiss.

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In summary, Plaintiffs request that (1) they be permitted to file a consolidated 6-page PMC response on May 19, 2023; and (2) an extended and consolidated Rule 12 briefing schedule as proposed above.

Defendants oppose Plaintiffs' request for an extended or combined motion-to-dismiss briefing schedule.

Plaintiffs thank the Court for its consideration.

Sincerely,

/s/ Raphael Janove

Raphael Janove

CC: All Counsel of record